Case No. A21-1349

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APPELLATE COURTS

State of Minnesota

In Supreme Court

Under the Rainbow Early Education Center

Relator/Appellant,

v.

County of Goodhue,

Respondent.

An appeal from the
Order & Judgment dated Sept. 15, 2021
in Case No. 25-CV-19-824
In the Minnesota Tax Court,
Tax Court Judge Wendy Tien.

REPLY BRIEF OF RELATOR/APPELLANT

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ARGUMENT

I. Because the County does not address whether the inquiries to determine an exempt educational institution should be "factors" or "elements," the Court should treat Appellant's argument as unopposed and hold the inquiries are factors.

Respondent (the "County") mentions that Appellant ("UTR") argues that the Tax Court erred by treating the inquiries of *Nw. Preparatory*[1] as "elements" to be satisfied completely, rather than "factors" to be considered in evaluating the totality of circumstances. But the County does not otherwise oppose or address UTR's position that a proper trial court analysis of these inquiries is as *factors* and the Tax Court erred by treating them as *elements*. Because the County does not address this argument with law, logic, or policy, the Court should treat UTR's argument on this issue as unopposed.

The County argues that "[w]hether considered factors or elements[,] the Tax Court found UTR['s submissions] lacking and [it] did not meet [its] burden of proof." Resp't Br. at 25. This is an incorrect reading of the law and this case's procedural posture.

[1] *State v. Nw. Preparatory Sch.*, 249 Minn. 552, 83 N.W.2d 242 (1957).

The Tax Court decided this case on cross-motions for summary judgment. If the *Nw. Preparatory* inquiries are *factors*, then, at best, the Tax Court could have denied *both* motions, and set the matter for trial.

With UTR as a movant, the Tax Court was required to evaluate the evidence UTR put forth in the light most favorable to the County. Although UTR disagrees with this, the Tax Court could have conceivably held that UTR's evidence was insufficient to entitle it to summary judgment. In other words, the Tax Court could have found that reasonable minds could differ as to whether UTR's evidence established it as an exempt educational institution.

But UTR was also the nonmovant. As the nonmovant, UTR is entitled to the Tax Court's evaluation of the evidence in the light most favorable to it. The County did not present *any* evidence tending to show that UTR did not satisfy the *Nw. Preparatory* factors. Because the County did not present any evidence addressing any of the *Nw. Preparatory* inquiries, the Tax Court only granted the County's motion because it held that the inquiries were "essential elements" of UTR's claim that UTR itself did not satisfy. *See* ADD-27-28 (Tax Court citing to *Bebo*, which addresses granting summary judgment against a plaintiff where the plaintiff has a burden of proof on an "essential element" of the plaintiff's claim; *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. Ct. App. 2001)). That may be

reason to deny UTR's motion, but it is not a reason to grant the County's motion. In other words, the Tax Court did not only hold that UTR had not presented enough evidence entitling it to win on summary judgment; the Tax Court held that there were *no circumstances* where UTR could satisfy the *Nw. Preparatory* inquiries.

It is obvious the Tax Court did not *weigh* the *Nw. Preparatory* inquiries as factors because even taking the Tax Court's position at face value, UTR satisfied the first of the three inquiries (as an educational institution), and had a "non-satisfaction" (as opposed to negation) of the remaining two inquiries.[2] On this record, we have a "satisfied" weight towards UTR on the first factor and no weight either way on the remaining two factors. That cannot result in a "win" for the County.

The Tax Court's holding is similar to a trial court holding that a plaintiff could not prevail on a negligence claim because the plaintiff could not present affirmative evidence of proximate cause. But unlike "proximate cause" in a negligence claim, the type of inquiries in *Nw. Preparatory*, like "similar educational training" and "ready assimilation," are far more fact-intensive, fluid, discretionary, and subject to evolve over time. Moreover, the factors of negligence are not "weighed" on a totality of the

[2] UTR disagrees that it did not produce evidence on these two factors too. Appellant's Br. at 31-39.

circumstances basis to see if the defendant was negligent; all factors must be satisfied. For an educational exemption, on the other hand, the Court should be examining the weight of all possible factors to determine if the institution qualifies.

If the County wanted to prevail on summary judgment, it would have had to introduce evidence addressing these factors showing that no reasonable factfinder could find for UTR. It did not. If this Court holds that the *Nw. Preparatory* inquiries are either inapplicable or factors to guide the trial courts' discretion, then it must reverse the Tax Court.

We can see this in action in the County's argument. In arguing on the second *Nw. Preparatory* factor, "public burden," the County argues that "[t]here is no evidence that this child care center lessens the financial

burden on taxpayers to provide for public schooling."[3] Providing pre-K education that is rated at the same level as pre-K education the public schools provide is certainly evidence of lessening a public burden. But assuming it is not, this failure of evidence only shows that UTR cannot prevail on summary judgment. The County, for its part, cites to no evidence that the Tax Court could have weighed to find in its favor on this factor. Resp't Br. at 22. The same is true for the County's argument on assimilation. Resp't Br. at 23.

[3] This cannot be a *universal* factor for all educational institution exemptions unless it is broadened beyond the typical notion of required public schooling, i.e., K-12. The State only has the burden to educate children through high school. Minn. Const. art. XIII § 1; Minn. Stat. § 120A.22. If lessening the "burden" on taxpayers is a strict standard (or "element"), then an exemption should not attach to levels of education where the State has no legal duty to provide it, e.g., post-secondary. Under this reading, Gustavus Adolphus would not be tax exempt, even though it is most certainly a "university," an entity at least facially exempt under Minn. Stat. § 272.02. Although a plain reading of Section 272.02 clearly includes "universities" as exempt, *Nw. Preparatory* did not hold that its factors applied only to seminaries (and not universities), since it noted that "an academy, college, university, or seminary of learning" "may teach a variety of useful accomplishments" and yet still not be eligible for an exemption. *Nw. Preparatory Sch.*, 249 Minn. at, 556, 83 N.W.2d at 246. Designation as a "university," alone, apparently does not qualify. *Nw. Preparatory* further stated its guidance applied regardless of what "a school…chooses to call itself." *Id.* at 557, 246. If a "university" must also lessen a financial burden on taxpayers, then this factor must extend not only to public schooling that government is obligated to provide, but also to public schooling it chooses to provide. For example, the Red Wing School District provides pre-K education, analogous to UTR. If Gustavus Adolphus alleviates the post-secondary burdens of the University of Minnesota, then UTR alleviates the pre-K burdens of the Red Wing School District.

II. A taxpayer does not need to "coordinate" with, or obtain approval from, a local, public school district to qualify for a tax exemption as an educational institution.

A. Cases of the Minnesota Tax Court have little, if any, precedential effect and do not serve as guidance for this Court.

The County is very focused on the supposed requirement that a taxpayer must coordinate with the local, public school district to be entitled to an exemption.[4] The County cites to two cases to support its argument, *Pine Cty. Co-Op Nursery Sch. v. Cty. of Pine* and *Eyeota Kid's Corner, Inc. v. Cty. of Olmstead*. Resp't Br. at 19-23. Both *Pine Cty. Co-Op* and *Eyeota Kid's Corner* are Minnesota Tax Court cases.

The Tax Court is a trial court. A trial court never makes the law; it applies the law. The Tax Court's holdings have no more legal weight than the holdings of any of Minnesota's District Courts. See *Kmart Corp. v. Cty. of Stearns*, 710 N.W.2d 761, 770 (Minn. 2006) ("Because the tax court serves the same function as district courts in adjudicating property tax appeals, its decisions should not have greater precedential effect than decisions of the district court.").

[4] The Tax Court made this same assumption.

Although this is true for any trial court, it is especially true for the Tax Court. The Tax Court is state agency that is part of the executive branch. Minn. Stat. § 271.01 subd. 1; accord *Kmart*, 710 N.W.2d at 769 ("Although the tax court is described as a 'court,' it is an administrative agency within the executive branch."). The Tax Court thus has neither the lawmaking power of the Legislature, nor this Court's power to create legal precedent. Neither case guides this Court. See *Kmart*, 710 N.W.2d at 769 (holding that Tax Court decisions "have little, if any, precedential effect.").

B. "Coordination" with a local, public school district is not a factor under *Nw. Preparatory* or any law, and should not be a factor because it would allow public districts to deny exemptions to private schools.

The people of Minnesota, via its Constitution, have declared that private educational institutions are not subject to property taxation. If "coordination" with a public school is a requisite to obtain this exemption, then the public school district could thwart the people's will in any case simply by refusing to give its approval to the private school. This cannot be the constitutional standard.

The County notes that the "cases cited by Respondent, which were successful in reaching exemption, had the support of the local school district." Resp't Br. at 25. Bully for them. In this case, the Superintendent

did not cooperate, not necessarily because of any objection to UTR's position, but because he did not want to be involved in the litigation.

In any times, it can be reasonably assumed that a superintendent of a school district has more pressing concerns than evaluating and/or approving the operations of a competing private school. In these times, it is certainly so, with state legislators demanding more access for parents to students' studies.[5]

It is worth noting that, at the very end of its opinion, the Tax Court stated that "it is not necessary to decide whether a petitioner seeking exemption must specifically prove coordination with a public school to meet its burden…" ADD-28. Yet, just a few paragraphs prior, the Tax Court wrote that "Under the Rainbow 'does not include any information from Red Wing School District 256 indicating any coordination with the school,' *warranting summary judgment*." ADD-25-26 [emphasis added]. *See also* ADD-23 (Tax Court writing that the "'per se' argument that Under the Rainbow urges on the court does not constitute factual evidence that it *coordinates, or cooperates, with the public school district* to provide the educational services that otherwise would be provided by the public

[5] See Emma Nelson and Briana Bierschbach, "Minnesota Senate GOP introduce bills requiring teachers to share curriculum with parents," *Star Tribune* (Feb. 14, 2022) (accessible at https://www.startribune.com/minnesota-senate-republicans-introduce-bills-requiring-teachers-to-share-curriculum-with-parents/600146705/).

schools…." [emphasis added]). Given the Tax Court's multiple statements requiring coordination, this Court is not required to accept the Tax Court's *ex post facto* footnote. Obviously, the County thinks coordination is needed too. But "coordination" is not an established legal element, nor is it a burden this Court should impose on taxpayers. It has no origin in either the Constitution or the statutes.

III. The Tax Court's overreliance on *Nw. Preparatory* was erroneous.

The County misframes UTR's arguments. The County states that UTR argued that the Tax Court "erred in that [*Nw. Preparatory*] is an older case…" Resp't Br. at 25. It is not *per se* that *Nw. Preparatory* is old that makes it unhelpful to the Court. There are many old cases that are still regularly helpful to the Court. See e.g., *Ninetieth Minn. State Senate v. Dayton*, 903 N.W.2d 609, 627 (Minn. 2017) (citing *Marbury v. Madison*, 5 U.S. 137, 177, 2 L. Ed. 60 (1803) for the proposition, applicable in this case, that it is "emphatically" the role of the judiciary, not the legislature (or the executive), "to say what the law is") (Anderson, J., dissenting).

Instead, it is both the level of education *Nw. Preparatory* was examining (secondary, essentially for young adults, versus pre-kindergarten) and the changing nature of education over time. In the

1950s, all levels of education were different, with pre-kindergarten, post-secondary, and even secondary being much less common. At present, children may be exempt from compulsory education if they have completed "state and district standards required for graduation from high school." Minn. Stat. § 122A.022 subd. 12 (2021). When *Nw. Preparatory* was decided, children could be exempted from compulsory education if the child had "already completed the studies ordinarily required in the *ninth grade*") Minn. Stat. § 132.05 subd. 3 (1953) [emphasis added]. With such a changed educational environment, a case from such a distinct educational era is unhelpful.

The "more recent" cases the County refers to are the non-precedential Tax Court cases that, as stated above, are not guiding for this Court. An executive agency does not "say what the law is."

CONCLUSION

Our law should be clarified to hold that, like exempt charities (which are less constitutionally protected than educational institutions),[6] educational exemptions must be evaluated on a case-by-case basis with a list of possible factors. This analysis cannot be reduced to raw elements.

UTR introduced enough evidence to entitle it to summary judgment. This is particularly true since, in weighing the possible factors, the County introduced no evidence at all tending to disprove UTR's case. And even if the Court finds that UTR did not submit sufficient evidence to prevail on summary judgment, it was certainly enough evidence to avoid summary judgment against UTR.

Respectfully, UTR asks this Court for an order:

1. Reversing the Tax Court;
2. Holding that the inquiries in *Nw. Preparatory* are factors to be considered and not essential elements;

[6] *See* Minn. Const. art. X § 1 (exempting from taxation "public burying grounds, public school houses, public hospitals, academies, colleges, universities, all seminaries of learning, all churches, church property, houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose," but then limiting the Legislature's power by stating that "The legislature by law may define or limit the property exempt under this section other than churches, houses of worship, and *property solely used for educational purposes by academies, colleges, universities and seminaries of learning*." [emphasis added]).

3. Entering summary judgment against the County; or, in the alternative,

4. Remanding to the Tax Court for a trial on the merits.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE, RULE 132.01

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